

COURT OF APPEAL OF STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

February 11, 2002

**D038221        People v. Seals**

Judgment affirmed. McIntyre, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D035867        In re Marriage of Schatz**

The judgment is reversed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D039306        Estar L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Estar L. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D039358        Susan S. v. Superior Court of San Diego County/ San Diego County Health and Human Services Agency**

The attorney for petitioner Susan S. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D038318        In re James H., a Juvenile**

The juvenile court custody order conditioning unsupervised visitation on Ronald's participation in therapy is reversed. The order terminating dependency jurisdiction is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Haller, J.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke  
Clerk: D. E. Moore

**D036096        Harrar etc., et al. v. Teregis et al.**

Cause called on merits. Kevin F. Quinn, Esq. argued for appellant. Robert H. Wright, Esq. argued for respondent, Teregis. Mr. Quinn replied. Cause submitted.

**D036333        Brown et al. v. Gale Banks Engineering, Inc.**

Cause called on merits. Greg Konoske, Esq. argued for appellant. Nannette Souhrada, Esq. argued for respondent. Mr. Konoske replied. Cause submitted.

Court recessed at 9:53 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

**D036318        White v. County of San Diego**

Cause called on merits. Horacio Barraza, Esq. argued for appellant. English R. Bryant, Deputy County Counsel argued for respondent. Mr. Barraza replied. Cause submitted.

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**D035696 Warren etc., et al. v. Sharabi**

Cause called on merits. Steven A. McKinley, Esq. argued for appellant/cross-respondent. Frank E. Rogozienski, Esq. argued for respondent/cross-appellant. Mr. McKinley replied. Cause submitted.

**D037304 Maciejewski v. Maciejewski**

Cause called on merits. Gustav G. Bujkovsky, Esq. argued for appellant. Dominique C. Maciejewski, argued for appellant, in pro per. Cause submitted.

Court recessed at 10:48 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

Clerk: D. E. Moore

**D038976 Schroeder v. City Counsel of the City of Irvine et al.**

Cause called on merits. Bradley W. Hertz, Esq. argued for appellant. Joel D. Kuperberg, Esq. argued for respondent. Mr. Hertz replied. Cause submitted.

**D038193 Creighton et al. v. Cybex International, Inc., et al.**

Cause called on merits. Margaret Kathryn Maas, Esq. argued for appellant. Kurt Vandercook Osenbaugh, Esq. argued for respondent. Ms. Maas replied. Cause submitted.

**D036704 Martin et al. v. Department of Real Estate et al.**

Cause called on merits. Robert J. Gaglione, Esq. argued for appellant. Gregory S. Price, Deputy Attorney General argued for respondent. Mr. Gaglione replied. Cause submitted.

**D037609 Hendricks v. Hannigan etc.**

Cause called on merits. Michael J. Aguirre, Esq. argued for appellant. Anthony Summers, Deputy Attorney General argued for respondent. The court accepted, in open court, Federal Court citations, from Mr. Summers. Mr. Aguirre replied. Cause submitted.

Court recessed at 2:59 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

**D034853 People v. Floyd**

Cause called on merits. Carmela F. Simoncini, Esq. argued for appellant. Laura Stillwell, Deputy Attorney General argued for respondent. Ms. Simoncini replied. Cause submitted.

Court recessed at 3:26 to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

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February 11, 2002 (Continued)

**D037183        Massie v. Stenehjem**

Cause called on merits. Clark R. Hudson, Esq. argued for respondent. Deborah R. Massie argued for appellant, in pro per. Cause submitted.

Court recessed at 3:55 p.m. until Wednesday, February 3, 2002 at 9 a.m.

**D039439        Testing Engineers-San Diego, Inc. v. Superior Court of San Diego County/Infinger,  
a Minor**

At the request of petitioner, the petition for writ of mandate is dismissed.

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**D039136      In re Buttrell on Habeas Corpus**

The petition is denied.

**D039396      Edward B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Edward B. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D039246      Miguel P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Miguel P. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

**D035933      People v. Mason et al.**

The opinion filed on January 15, 2002, was certified for publication with the exception of parts I through IV and VI through X of the discussion. For good cause it now appears that the opinion should be published in the Official Reports with the exception of parts I through IV and VII through X of the discussion and it is so ordered. It is also ordered that the opinion be modified with other particulars. There is no change in judgment.

**D038855      People v. Chavez**

Judgment affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D036196      Lin v. Qualcomm Incorporated**

The judgment is affirmed. McDonnell, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D039180      In re Jennings on Habeas Corpus**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

Clerk: D. E. Moore

**D037522      Mortenson v. McCormick**

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Kevin P. Sullivan, Esq. argued for respondent. Mr. Mitchell replied. Cause submitted.

**D038615      Foley v. McAneny**

Cause called on merits. Joanne Franca, Esq. argued for appellant. Eugene V. Zech, Esq. argued for respondent. Ms. Franca replied. Cause submitted.

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**D035587        Shannahan v. Smith et al.**

Cause called on merits. Andrew A. Kurz, Esq. argued for appellant. Scott Hay, Esq. argued for respondent. Mr. Kurz replied. Cause submitted.

**D038195        Feather et al. v. WCO Vacationland, Inc.**

Cause called on merits. Julie Ann Palafox, Esq. argued for appellant. Ronald Edward White, Esq. argued for respondent. Cause submitted.

**D036534        Truck Insurance Exchange v. Sullivan, Kelly & Associates, Inc.**

Cause called on merits. Alan Jampol, Esq. argued for appellant and cross-respondent. Jane Fleming, Esq. argued for respondent and cross-appellant. Mr. Jampol replied. Cause submitted.

Court recessed at 10:47 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Judith McConnell  
Clerk: D. E. Moore

**D038188        Callender v. Marie Callender Pie Shops, Inc.**

Cause called on merits. Clifford Wiley Roberts, Jr., Esq. argued for appellant. Richard E. Drooyan, Esq. argued for respondent. Mr. Roberts replied. Cause submitted.

**D037016        S & M Finance Company, Inc. v. Golden Rim Financial Corp.**

Cause called on merits. Michael Rogers, Esq. argued for appellant. David Z. Bark, Esq. argued for respondent. Mr. Rogers replied. Cause submitted.

**D036620        Children's Hospital & Health Center v. Sutherland et al.**

Cause called on merits. Gary M. Orlansky, Esq. argued for appellant. Gregory A. Wille, Esq. argued for respondent, Sutherland etc. Eric Peter Francisconi, Esq. argued for respondent, Roy etc. Mr. Orlansky replied. Cause submitted.

Court recessed at 2:40 p.m. until Thursday, February 14, 2002 at 9 a.m.

**D038419        People v. Turner**

The judgment is affirmed. Kremer, P. J.; We Concur: Huffman, J., O'Rourke, J.

**D039507        Warner v. Superior Court of San Diego County/Breg, Inc., et al.**

The petition is denied as premature in view of the pending motion for reconsideration.

**D039157        Huber, deceased, et al. v. Workers' Compensation Appeals Board/Sundance Natural Foods Co.**

The petition is denied.

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**D039397       Taylor Ball of California, Inc. v. Superior Court of San Diego County/Shane Thomas Infinger etc., et. al.**

At the request of petitioner, the petition for writ of mandate is dismissed.

**D039164       Simon v. Workers' Compensation Appeals Board/San Diego Gas & Electric Company**

The petition is denied.

**D038891       Grover v. City of San Diego et al.**

Upon written stipulation filed by the parties the appeal is dismissed.

**D039381       In re the Marriage of Hight**

Pursuant to California Rules of Court, rule 8, the appeal is dismissed.

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**D039126        Plourd et al. v. Superior Court of Imperial County/Austin**

The petition is denied.

**D037866        People v. Poche**

Affirmed. O'Rourke, J.; We Concur: Kremer, P.J., Huffman, J.

**D035346        People v. Johnson**

The sentence for count 2 is reversed and the prison prior enhancement is stricken. In all other respects, the judgment is affirmed. The matter is remanded for resentencing on count 2 in accordance with the views expressed in this opinion. The trial court is directed to amend the abstract of judgment accordingly and to forward a certified copy of the amended abstract to the Department of Corrections. CERTIFIED FOR PUBLICATION. Huffman, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D038135        People v. Halloran**

Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

**D037863        People v. White**

Judgment affirmed. Kremer, P.J.; We Concur: Huffman, J., O'Rourke, J.

**D037176        People v. Romero**

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

**D035756        People v. Weisman**

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McConnell, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith McConnell

Clerk: D. E. Moore

**D038025        People v. Thompson**

Cause called on merits. Roland J. Haddad, Esq. argued for appellant. Larissa Hendren, Deputy Attorney General argued for respondent. Cause submitted.

**D037138        McMorrow v. Vlahos et al.**

Cause called on merits. Richard A. Lucal, Esq. argued for appellant. John S. Addams, Esq. argued for respondent, Vlahos. Mr. Lucal replied. Cause submitted.

**D037159)        Oliveri v. Copley Newspapers et al.**

**D038445)        Oliveri v. Copley Newspapers et al.**

Cause called on merits. Gregory D. Roper, Esq. argued for appellant and cross-respondent.

David A. Kay, Esq. argued for respondent and cross-appellant. Mr. Roper replied. Cause submitted.

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**D036194      Qualcomm Incorporated v. Industrial Indemnity Insurance Company**  
Cause called on merits. Frank E. Rogozienski, Esq. argued for appellant and cross-respondent. Thomas W. Byron, Esq. argued for respondent and cross-appellant. Mr. Rogozienski replied. Mr. Byron replied on cross appeal. Cause submitted.

Court recessed at 10:55 a.m. until 1:30 p.m.

**D037251      People v. Reeves**  
Affirmed. McIntyre, J.; We Concur: McDonald, Acting P.J., McConnell, J.

**D039534      Arkin v. Superior Court of San Diego County/Silerman**  
The petition is denied.

**D036684      Chart House Enterprises, Inc. v. Noubari et al.**  
The order are affirmed. The Nubaris are entitled to recover their costs of appeal. McIntyre, J.; We Concur: Nares, Acting P.J., O'Rourke, J.

**D038728      In re A.P., a Juvenile**  
The judgment terminating Mother's parental rights is affirmed. McConnell, J.; We Concur: Kremer, P.J., Huffman, J.

**D038686      Tenet Healthsystem Hospitals, Inc. v. La Mesa Medical Associates et al.**  
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a). The appeal is dismissed.

**D037948      People v. Ivey**  
Judgment affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Gilbert Nares  
Clerk: D. E. Moore

**D037323      Shapiro v. San Diego City Council**  
Cause called on merits. Leslie Girard, Deputy City Attorney argued for appellant. Charles Wolfinger, Esq. argued for respondent. Mr. Girard replied. Cause submitted.

Court recessed at 1:54 p.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith McConnell

**D037480      Gray et al. v. Tri-City Medical Center**  
Cause called on merits. No appearance by appellant's counsel. Lisa Cooney, Esq. argued for respondent. Cause submitted.



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**D038628        K & K Marble Importers, Inc. v. Sovereign Bancorp of Nevada, Ltd., et al.**

Cause called on merits. Wendy Wan-Juoh Huang, Esq. argued for appellant. Carl Pentis, Esq. argued for respondent. Ms. Huang replied. Cause submitted.

**D038181        American Home Shield of California, Inc., et al. v. Fidelity National Home  
Warranty Company et al.**

Cause called on merits. Mike Margolis, Esq. argued for appellant. Susan Williams, Esq. argued for respondent. Mr. Margolis replied. Cause submitted.

Court recessed at 2:35 p.m. until Friday, February 15, 2002 at 9 a.m.

**D036742        Franklin v. Bakken et al.**

Upon filing a written abandonment of appeal, the appeal is dismissed.

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February 15, 2002

Court convened at 9 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices  
James McIntyre and Terry O'Rourke  
Clerk: D. E. Moore

**D038832        In re Michael G., et al.**

Cause called on merits. Julie E. Braden, Esq. argued for appellant. Erica Hiramatsu, argued for Michael G. Kathryn Krug, Deputy County Counsel argued for respondent. Cause submitted.

Court recessed at 9:14 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D037223        Duran v. Herrera et al.**

Cause called on merits. Judith Hartwig, Esq. argued for appellant. James A. Testa, Esq. argued for respondent. Ms. Hartwig replied. Cause submitted.

**D038544        In re Pedro M., a Juvenile**

Cause called on merits. Andrea St. Julian, Esq. argued for appellant, the father. Carl Fabian, Esq. argued for the minor. Kathryn Krug, Deputy County Counsel argued for respondent. Ms. St. Julian replied. Cause submitted.

**D036053        Madori v. Fleet Mortgage Group, Inc., et al.**

Cause called on merits. Richard C. Norton, Esq. argued for appellant. Jonathan Zak, Esq. argued for respondent. Mr. Norton replied. Cause submitted.

**D036553        Ricketts v. Compaction Plus, Inc.**

Cause called on merits. James Pierce Reid, Esq. argued for appellant. Hugo William Anderson, Esq. argued for respondent. Mr. Reid replied. Cause submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

**D035655        People v. Snow**

The sentence is vacated and the matter remanded to the trial court to resentence Snow in conformance with the alternatives set forth in this opinion. The judgment is otherwise affirmed. CERTIFIED FOR PARTIAL PUBLICATION. McDonald, J.; We Concur: Benke, Acting P.J., Huffman, J.

COURT OF APPEAL OF STATE OF CALIFORNIA  
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February 15, 2002 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices  
James McIntyre and Terry O'Rourke  
Clerk: D. E. Moore

**D037510        In re Alexis T., a Juvenile**

Cause called on merits. Ward Clay, Esq. argued for appellant. Susan Miller, Deputy Attorney General argued for respondent. Mr. Clay replied.

**D037131        People v. Green**

Cause called on merits. Amanda Doerr, Esq. argued for appellant. Susan Miller, Esq. Deputy Attorney General argued for respondent. Ms. Doerr replied. Cause submitted.

Court adjourned at 2:10 p.m.

**D036683        People v. Trevathan**

The petition for rehearing is denied.

**D036627        People v. Denning**

Petition for rehearing is denied.

**D035358        Grijalva v. Rancho Vista Del Mar et al.**

The petition for rehearing is denied.

**D036014        People v. Aquino**

The request for partial publication is denied.